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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.               | CONFIRMATION NO.       |
|--|-------------|----------------------|-----------------------------------|------------------------|
| 10/583,181   | 04/23/2007  | Gianfranco D'Amato   | 03910/0211512-US0                 | 7651                   |
| 7278   | 7590        | 07/23/2009           |                                   |                        |
| DARBY & DARBY P.C.<br>P.O. BOX 770<br>Church Street Station<br>New York, NY 10008-0770 |             |                      | EXAMINER<br>DEMERE, CHRISTOPHER R |                        |
|  |             |                      | ART UNIT<br>3782                  | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>07/23/2009           | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/583,181             | D'AMATO, GIANFRANCO |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | CHRISTOPHER DEMEREE    | 3782                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 22-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/8/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11 and 22-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amato (US 5586689 A) in view of Koch (US 1520870 A).

Regarding claims 1-8, 10, 11 and 22, D'Amato teaches a receptacle and the blank for making comprising an upper and a lower peripheral edge (24 and 25) and first and second connection edges (6 and 7) laterally connecting said peripheral edges, each of said connection edges extending along overlap regions comprising at least one peripheral recess that is open to the outside (10 and 11) which are interconnectable for shaping the container. D'Amato teaches everything except an inspection opening formed in the container.

Koch teaches a receptacle comprising overlapping inspection openings formed in the blank (13). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify D'Amato's receptacle to include overlapping openings to allow a user to view the contents, as taught by Koch. Examiner notes that the location of said openings would have to be located at the peripheral edges (6 and 7) of D'Amato's blank since that is the only overlapping portions of the blank (i.e. 10 and 11).

Regarding claim 9, D'Amato, as modified above, teaches a receptacle and the blank for making characterized in that the peripheral opening is at least surrounded in part by a coating area (D'Amato; Col 4 lines 13-16).

Regarding claims 23 and 24, D'Amato, as modified above, teaches everything except a top and bottom peripheral flange (i.e. cup-like shape). Koch teaches a bottle shaped receptacle comprising a bottom peripheral flange (see Fig. 4). It would have been obvious to one of ordinary skill in the art to modify D'Amato's receptacle from a cone-shape to more of a cup or bottle shape in order to contain fluids, as taught by Koch.

Regarding claims 25-28, 30 and 31, D'Amato, as modified above, teaches a receptacle characterized in that the inspection opening is sealed in fluid-tight fashion by a particularly transparent film or coating (Koch; 14).

3. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Amato in view of Koch as applied to claim 22 above, and further in view of Nelson et al. (US 6378763 B1; hereinafter Nelson).

Regarding claim 29, D'Amato, as modified above, teaches everything except the receptacle comprising an imprint or coloration. Nelson teaches a container comprising indicia printed thereon (Col 5 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify D'Amato's receptacle to include indicia in order to provide a label, as taught by Nelson.

***Response to Arguments***

4. Applicant's arguments filed 4/16/2009 have been fully considered but they are not persuasive. Applicant argues that the prior art fails to teach peripheral openings in overlapping regions used for an inspection opening. Specifically, Applicant argues that D'Amato teaches away from the idea that his peripheral openings are open to the outside since D'Amato teaches that his openings are created in order to reduce the thickness in the overlapped areas.

Examiner notes D'Amato indeed teaches peripheral openings 10 and 11 on his blank. Examiner also notes that Koch teaches the idea of overlapped openings to serve as an "inspection" opening for the container erected from the blank. Therefore, it would have been obvious to one of ordinary skill in the art to apply Koch's teaching of an "inspection" opening to D'Amato's conical container. The overlapped region openings are capable of being used for this "inspection" opening in the erected state.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782